FREEDOM NATIONAL; SLAVERY SECTIONAL.

SPEECH

OF

HON. CHARLES SUMNER,

OF MASSACHUSETTS,

ON HIS MOTION

TO REPEAL THE FUGITIVE SLAVE BILL,

IN THE SENATE OF THE UNITED STATES, AUGUST 26, 1852.

If any man thinks that the interest of these Nations and the interest of Christianity are two separate and distinct things, I wish my soul may never enter into his secret. OLIVER CROMWELL.

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another," was introduced into the House of Representatives by Mr. Pindall, of Virginia, was considered for several days in Committee of the Whole, amended and passed by this body. In the Senate, after much attention and warm debate, it was also passed with amendments. But on its return to the House for the adoption of the amendments, it was dropped. This effort, which, in the discussions of this subject, has thus far been unnoticed, is chiefly remarkable as the earliest recorded evidence of the unwarrantable assertion, now so common, that this provision was originally of vital importance to the peace and harmony of the country.

At last, in 1850, we have another Act, passed by both Houses of Congress and approved by the President, familiarly known as the Fugitive Slave Bill. As I read this statute I am filled with painful emotions. The masterly subtlety with which it is drawn, might challenge admiration, if exerted for a benevolent purpose; but in an age of sensibility and refinement, a machine of torture, however skilful and apt, cannot be regarded without horror. Sir, in the name of the Constitution which it violates; of my country which it dishonors; of Humanity which it degrades; of Christianity which it offends, I arraign this enactment, and now hold it up to the judgment of the Senate and the world. Again I shrink from no responsibility. I may seem to stand alone; but all the patriots and martyrs of history, all the Fathers of the Republic, are with me. Sir, there is no attribute of God which does not unite against this Act.

But I am to regard it now chiefly as an infringement of the Constitution. And here its outrages, flagrant as manifold, assume the deepest dye and broadest character only when we consider that by its language it is not restrained to any special race or class, to the African or to the person with African blood; but that any inhabitant of the United States, of whatever complexion or condition, may be its victim. Without discrimination of color even, and in violation of every presumption of freedom, the Act surrenders all, who may be claimed as "owing service or labor" to the same tyrannical proceedings. If there be any, whose sympathies are not moved for the slave, who do not cherish the rights of the humble African, struggling for divine Freedom, as warmly as the rights of the white man, let him consider well that the rights of all are equally assailed. "Nephew," said Algernon Sidney in prison, on the night before his execution, "I value not my own life a chip, but what concerns me is that *the law* which takes away my life may hang every one of you, whenever it is thought convenient."

Though thus comprehensive in its provisions and applicable to all, there is no safeguard of Human Freedom which the monster Act does not set at naught.

It commits this great question—than which none is more sacred in the law—not to a solemn trial; but to summary proceedings.

It commits this question—not to one of the high tribunals of the land—but to the unaided judgment of a single petty magistrate.

It commits this question to a magistrate, appointed, not by the President with the consent of the Senate, but by the Court; holding his office, not during good behaviour, but merely during the will of the Court; and receiving, not a regular salary, but fees according to each individual case.

It authorizes judgment on *ex parte* evidence, by affidavits, without the sanction of cross-examination.

It denies the writ of Habeas Corpus, ever known as the Palladium of the citizen.

Contrary to the declared purposes of the framers of the Constitution, it sends the fugitive back "at the public expense."

Adding meanness to the violation of the Constitution, it bribes the Commissioner by a double fee to pronounce against Freedom. If he dooms a man to Slavery, the reward is ten dollars; but, saving him to Freedom, his dole is five dollars.

The Constitution expressly secures the "free exercise of religion;" but this Act visits with unrelenting penalties the faithful men and women, who may render to the fugitive that countenance, succor, and shelter, which in their conscience "religion" seems to require.

As it is for the public weal that there should be an end of suits, so by the consent of civilized nations, these must be instituted within fixed limitations of time; but this Act, exalting Slavery above even this practical principle of universal justice, ordains proceedings against Freedom without any reference to lapse of time.

Glancing only at these points, and not stopping for argument, vindication, or illustration, I come at once upon the two chief radical objections to this Act, identical in principle with those brought by our Fathers against the British Stamp Act; *first*, that it is a usurpation by Congress of powers not granted by the Constitution, and an infraction of rights secured to the States; and, *secondly*, that it takes away Trial by Jury in a question of Personal Liberty and a suit at common law. Either of these objections, if sustained, strikes at the very root of the Act. That it is obnoxious to both seems beyond doubt.

But here, at this stage, I encounter the difficulty, that these objections have been already foreclosed by the legislation of Congress and by the decisions of the Supreme Court; that as early as 1793 Congress assumed power over this subject by an Act, which failed to secure Trial by Jury, and that the validity of this Act under the Constitution has been af-

firmed by the Supreme Court. On examination this authority will disappear.

The Act of 1793 proceeded from a Congress that had already recognized the United States Bank, chartered by a previous Congress, which, though sanctioned by the Supreme Court, has been since [illegible] pronounced unconstitutional. In its errors as to the Bank, it may have erred also as to fugitives from labor. But the very Act contains a capital error on this very subject, condemned by the Supreme Court, in pretending to vest a portion of the judicial power of the Nation in State officers. This error takes from the Act all authority as an interpretation of the Constitution. I dismiss it.

The decisions of the Supreme Court are entitled to great consideration, and will not be mentioned by me except with respect. Among the memories of my youth are happy days in which I sat at the feet of this tribunal, while Marshall presided, with Story by his side. [illegible] proceeds from the case of *Prigg vs. Pennsylvania*. (16 Peters, 539,) wherein the power of Congress over this matter is asserted. Without going into any minute criticism of this judgment, or considering the extent to which it is extra-judicial, and therefore [illegible], which has been already disregarded in one State, and by an able court in another; but conceding to it a certain degree of weight as a rule to the judiciary on this particular point, still it does not touch the grave question arising from the denial of Trial by Jury. This judgment was pronounced by Mr. Justice Story. From the interesting biography of this great jurist, recently published by his son, we derive the distinct statement that the necessity of Trial by Jury was not before the Court; so that, in the estimation of the judge himself, it was still an open question. Here are the words:

"The prevailing opinion, which has created great prejudice against this judgment, is that it denies the right of a person claimed as a fugitive from service or labor to a trial by jury. This mistake arises from supposing the case to involve the general question as to the constitutionality of the Act of 1793. But in fact no such question was in the case; and the argument that the Act of 1793 was unconstitutional, because it did not provide for a trial by jury according to the requisitions of the sixth article in the amendments to the Constitution, having been suggested to my father on his return from Washington, he replied that this question was not argued by counsel nor considered by the Court, and that he should still consider it an open one."

But whatever may be the influence of this judgment as a rule to the judiciary, it cannot arrest our duty as legislators. And here I adopt with entire assent the language of President Jackson, in his memorable Veto, in 1832, of the Bank of the United States. To his course was opposed the authority of the Supreme Court, and this is his reply:

"If the opinion of the Supreme Court covers the whole ground of this Act, it ought not to control the co-ordinate authorities of this Government. The Congress, the Executive, and the Court, must each for itself be guided by its own opinion of the Constitution. *Each public officer who takes an oath to support the Constitution, swears that he will support it as he understands it, and not as it is understood by others.* It is as much the duty of the House of Representatives, of the Senate, and of the President, to decide upon the constitutionality of any bill or resolution, which may be presented to them for passage or approval, as it is of the Supreme Judges when it may be brought before them for judicial decision. The authority of the Supreme Court must not, therefore, be permitted to control the Congress or the Executive, when acting in their legislative capacities, but to have only such influence as the force of their reasoning may deserve."

With these authoritative words of Andrew Jackson I dismiss this topic. The early legislation of Congress and the decisions of the Supreme Court cannot stand in our way. I advance to the argument.

(1.) *Now, first, of the power of Congress over this subject.*

The Constitution contains *powers* granted to Congress, *compacts* between the States, and *prohibitions* addressed to the Nation and to the States. A compact or prohibition may be accompanied by a power; but not necessarily, for it is essentially distinct in its nature. And here the single question arises, whether the Constitution, by grant, general or special, confers upon Congress any power to legislate on the subject of fugitives from labor.

The whole legislative power of Congress is derived from two sources; first from the general grant of power, attached to the long catalogue of powers, "to make all laws which shall be necessary and proper for the carrying into execution the foregoing powers and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof:" and secondly, from special grants in other parts of the Constitution. As the provision in question does not appear in the catalogue of powers and does not purport to vest any power in the Government of the United States, or in any department or officer thereof, no power to legislate on this subject can be derived from the general grant. Nor can any such power be derived from any special grant in any other part of the Constitution; for none such exists. The conclusion must be, that no power is delegated to Congress over the surrender of fugitives from labor.

In all contemporary discussions and comments, the Constitution was constantly justified and recommended, on the ground that the powers not given to the Government were withheld from it. If under its original provisions any doubt could have existed on this head, it was removed, so far as language could remove it, by the Tenth Amendment, which, as we have already seen, expressly declares that, "the powers *not delegated* to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively

or to the people." Here on the simple text of the Constitution I might leave this question. But its importance justifies a more extended examination in a two-fold light; *first*, in the history of the Convention, revealing the unmistakeable intention of its members; and *secondly*, in the true principles of our Political System, by which the powers of the Nation and of the States are respectively guarded.

Look first at the *history of the Convention*. The articles of the old Confederation, adopted by the Continental Congress 15th Nov., 1777, though containing no reference to fugitives from labor, had provisions substantially like those in our present Constitution, touching the privileges of citizens in the several States, the surrender of fugitives from justice and the credit due to the public records of States. But, since the Confederation had no powers not "expressly delegated," and as no power was delegated to legislate on these matters, they were nothing more than articles of treaty or compact. Afterwards at the National Convention, these three provisions found a place in the first reported draft of a Constitution, and they were arranged in the very order which they occupied in the Articles of Confederation. *The clause relating to public records stood last.* Mark this fact.

When this clause, being in form merely a *compact*, came up for consideration in the Convention, various efforts were made to graft upon it a *power*. This was on the very day of the adoption of the clause relating to fugitives from labor. Charles Pinckney moved to commit it with a proposition for a *power* to establish uniform laws on the subject of bankruptcy and foreign bills of exchange. Mr. Madison was in favor of a *power* for the execution of judgments in other States. Gouverneur Morris also on the same day moved to commit a further proposition for a *power* "to determine the proof and effect of such acts, records, and proceedings." Amidst all these efforts to associate a power with this compact, it is clear that nobody supposed that any such already existed. This narrative places the views of the Convention beyond question.

The compact regarding public records, together with these various propositions, was referred to a committee, on which were Mr. Randolph and Mr. Wilson, with John Rutledge, of South Carolina, as chairman. After several days, they reported the compact with a *power* in Congress to prescribe by general laws the manner in which such records shall be proved. A discussion ensued, in which Mr. Randolph complained that the "definition of the powers of the Government was so loose as to give it opportunities of usurping all the State powers. *He was for not going further than the report, which enables the Legislature to provide for the effect of judgments.*" The clause of compact with the power attached was then adopted, and is now a part of the Constitution. In presence of this solicitude for the preservation of "State powers," even while considering a proposition for an express power, and also of the distinct statement of Mr. Randolph, that he "was not for going further than the report," it is evident that the idea could not then have occurred that a power was coupled with the naked clause of compact on fugitives from labor.

At a later day, the various clauses and articles severally adopted from time to time in Convention were referred to a committee of revision and arrangement, that they might be reduced to form as a connected whole. *Here another change was made.* The clause relating to public records, with the power attached, was taken from its original place at the bottom of the clauses of compact, and promoted to stand first in the article, as a distinct section, while the other clauses of compact, concerning citizens, fugitives from justice and fugitives from labor, each and all without any power attached, by a natural association compose but a single section, thus:

"ARTICLE IV.

"SECTION 1. Full faith and credit shall be given in each States to the public acts, records, and judicial proceedings of every other State. *And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.*

"SECTION 2. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

"A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the Executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

"No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

"SECTION 3. New States *may be admitted by the Congress* into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the Legislatures of the States concerned *as well as of the Congress.*

"*The Congress shall have power* to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

"SECTION 4. The *United States shall guarantee* to every State in this Union a republican form of Government, and *shall protect* each of them against invasion, and on application of the Legislature, or of the Executive, (when the Legislature cannot be convened) against domestic violence."

Here is the whole article. It will be observed that the third section immediately following the triad section of compacts, contains two specific powers, one with regard to new States, and the other with regard to the Public

Treasury. These are naturally grouped together, while the fourth section of this same article, which is distinct in its character, is placed by itself. In the absence of all specific information, reason alone can determine why this arrangement was made. But the conclusion is obvious, that, in the view of the Committee and of the Convention, each of these sections differs from the others. The first contains a compact with a grant of power. The second contains provisions, all of which are simple compacts, and two of which were confessedly simple compacts in the old Articles of Confederation, from which, unchanged in letter or spirit, they were borrowed. The third is a two-fold grant of power to Congress, without any compact. The fourth is neither power nor compact merely, nor both united, but a solemn injunction upon the National Government to perform an important duty.

The framers of the Constitution were wise and careful men, who had a reason for what they did and who understood the language which they employed. They did not, after discussion, incorporate into their work any superfluous provision; nor did they without design adopt the peculiar arrangement in which it appears. In adding to the record compact the express grant of power, they testified not only their desire for such power in Congress; but their conviction, that without an express grant, it would not exist. But if an express grant was necessary in this case, it was equally necessary in all the other cases. *Expressum facit cessare tacitum.* Especially, in view of its odious character, was it necessary in the case of fugitives from labor. In abstaining from any such grant, and then, in grouping the bare compact with other similar compacts, separate from every grant of power, they have most significantly testified their purpose. They not only decline all addition of any such power to the compact, but to render misapprehension impossible, to make assurance doubly sure, to exclude any contrary conclusion, they punctiliously arrange the clauses, on the principle of *noscitur a sociis*, so as to distinguish all the grants of power, but especially to make the new grant of power, in the case of public records, stand forth in the front by itself, severed from the mere naked compacts with which it was originally associated.

Thus the records of the Convention show that the founders understood the necessity of *powers* in certain cases, and, on consideration, most jealously granted them. A closing example will strengthen the argument. Congress is expressly empowered "*to establish an uniform rule of* Naturalization, and *uniform laws* on the subject of Bankruptcies, *throughout the United States.*" Without this provision these two subjects would have been within the control of the States, the Nation having no power *to establish an uniform rule* thereupon. Now, instead of the existing compact on fugitives from labor, it would have been easy, had any such desire prevailed, to add this case to the clause on Naturalization and Bankruptcies, and to empower Congress TO ESTABLISH AN UNIFORM RULE FOR THE SURRENDER OF FUGITIVES FROM LABOR THROUGHOUT THE UNITED STATES. Then, of course, whenever Congress undertook to exercise the power, all State control of the subject would have been superseded. The National Government would have been constituted, like Nimrod, the mighty Hunter, with power to gather the huntsmen, to halloo the pack, and to direct the chase of men, ranging at will, without regard to boundaries or jurisdictions, throughout all the States. But no person in the Convention, not one of the reckless partisans of slavery, was so audacious as to make this proposition. Had it been distinctly made, it would have been distinctly denied.

The fact that the provision on this subject was adopted unanimously, while showing the little importance attached to it *in the shape it finally assumed*, testifies also that it could not have been regarded *as a source of National power over Slavery.* It will be remembered, that, among the members of the Convention, were Gouverneur Morris, who had said, that he "*never* would concur in upholding domestic slavery;" Elbridge Gerry, who thought "we ought to be careful NOT *to give any sanction to it;* Roger Sherman, who was OPPOSED to any clause "acknowledging men to be property;" and Mr. Madison, who "thought it WRONG to admit in the Constitution the idea that there could be property in man." In the face of these unequivocal statements, it is absurd to suppose that they consented *unanimously* to any provision by which the National Government, the work of their hands, dedicated to Freedom, could be made the most offensive instrument of slavery.

Thus much for the evidence from the history of the Convention. But the *true principles of our Political System* are in harmony with this conclusion of history; and here let me say a word of State Rights.

It was the purpose of our fathers to create a National Government and to endow it with adequate powers. They had known the perils of imbecility, discord, and confusion, during the uncertain days of the Confederation, and desired a Government which should be a true bond of Union and an efficient organ of the national interests at home and abroad. But while fashioning this agency, they fully recognised the Governments of the States. To the nation were delegated high powers, essential to the national interests, but specific in character and limited in number. To the States and to the people were reserved the powers, general in character and unlimited in number, not delegated to the Nation or prohibited to the States.

The integrity of our Political System depends upon harmony in the operations of the Nation and of the States. While the Nation within its wide orbit is supreme, the States move with equal supremacy in their own. But from the necessity of the case the supremacy of each in its proper place excludes the other. The Nation cannot exercise rights reserved to the States; nor can the States interfere with the powers of the Nation. Any such action on either side is a usurpation. These principles were distinctly declared by Mr. Jefferson, in 1798, in words often adopted since; and which must find acceptance from all parties:

"That the several States composing the United States of America are not united upon the principle of unlimited submission to the General Government; but that by compact, under the style and title of the Constitution of the United States and of the amendments thereto, they constituted a General Government for special purposes, *delegated to that Government certain definite powers*, reserving each State to itself, the residuary mass of right to their own self-government, and that *whensoever the General Government assumes undelegated powers, its acts are unauthorized, void, and of no force.*"

But I have already amply shown to-day that Slavery is in no respect national—that it is not within the sphere of national activity—that it has no "positive" support in the Constitution, and that any interpretation thereof inconsistent with this principle would be abhorrent to the sentiments of its founders. Slavery is a local institution, peculiar to the States and under the guardianship of State Rights. It is impossible, without violence, at once to the spirit and to the letter of the Constitution, to attribute to Congress any power to legislate, either for its abolition in the States or its support anywhere. *Non-Intervention* is the rule prescribed to the Nation. Regarding the question only in its more general aspects, and putting aside, for the moment, the perfect evidence from the records of the Convention, it is palpable that there is no *national fountain* out of which the existing Slave Act can be derived.

But this Act is not only an unwarrantable assumption of power by the Nation; it is also an infraction of rights reserved to the States. Everywhere within their borders the States are the peculiar guardians of *personal liberty*. By Jury and Habeas Corpus to save the citizen harmless against all assault is among their duties and rights. To his State the citizen when oppressed may appeal, nor should he find that appeal denied. But this Act despoils him of his rights and despoils his State of all power to protect him. It subjects him to the wretched chances of false oaths, forged papers, and facile commissioners, and takes from him every safeguard. Now, if the slaveholder has a right to be secure *at home* in the enjoyment of *Slavery*, so also has the freeman of the North—and every person there is presumed to be a freeman—an equal right to be secure *at home* in the enjoyment of *Freedom*. The same principle of State Rights by which Slavery is protected in the Slave States throws its impenetrable shield over Freedom in the Free States. And here, let me say, is the only security for Slavery in the Slave States as for Freedom in the Free States. In the present fatal overthrow of State Rights you teach a lesson which may return to plague the teacher. Compelling the National Government to stretch its Briarean arms into the Free States, for the sake of Slavery, you show openly how it may stretch these same hundred giant arms into the Slave States for the sake of Freedom. This lesson was not taught by our fathers.

And here I end this branch of the question. The true principles of our Political System, the history of the National Convention, the natural interpretation of the Convention, all teach that this Act is a usurpation by Congress of powers that do not belong to it, and an infraction of rights secured to the States. It is a sword, whose handle is at the National Capital, and whose point is everywhere in the States. A weapon so terrible to Personal Liberty the Nation has no power to grasp.

(2.) *And now of the denial of Trial by Jury.* Admitting, for the moment, that Congress is intrusted with power over this subject, which truth disowns, still the Act is again radically unconstitutional from its denial of Trial by Jury in a question of Personal Liberty and a suit at common law. Since on the one side there is a claim of property, and on the other of liberty, both property and liberty are involved in the issue. To this claim on either side is attached Trial by Jury.

To me, sir, regarding this matter in the light of the common law and in the blaze of free institutions, it has always seemed impossible to arrive at any other conclusion. If the language of the Constitution were open to doubt, which it is not, still all the presumptions of law, all the leanings for Freedom, all the suggestions of justice, plead angel-tongued for this right. Nobody doubts that Congress, if it legislates on this matter, *may* allow a Trial by Jury. But if it *may*, so overwhelming is the claim of justice, it MUST. Beyond this, however, the question is determined by the precise letter of the Constitution.

Several expressions in the provision for the surrender of fugitives from labor show the essential character of the proceedings. In the first place, the person must be, not merely *charged*, as in the case of fugitives from justice, but actually *held to labor* in the State from which he escaped. In the second place, he must be "delivered up on claim of the party to whom such labor is *due*." These two facts, that he was *held* to labor, and that his labor was *due* to his claimant, are directly placed in issue and must be proved. Two necessary incidents of the delivery may also be observed. First, it

must be made in the State where the fugitive is found; and, secondly, it restores to the claimant his complete control over the person of the fugitive. From these circumstances it is evident that the proceedings cannot be regarded, in any just sense, as preliminary, or ancillary to some future formal trial, but as complete in themselves, final and conclusive.

And these proceedings determine on the one side the question of property, and on the other the sacred question of Personal Liberty in its most transcendent form; not merely Liberty for a day or a year, but for life, and the Liberty of generations that shall come after, so long as Slavery endures. To these questions, the Constitution, by two specific provisions, attaches the Trial by Jury. One of these is the familiar clause, already adduced: "No *person* shall be deprived of life, *liberty*, or property, *without due process of law*;" that is, without due proceedings at law, with Trial by Jury. Not stopping to dwell on this, I press at once to the other provision, which is still more express: "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of Trial by Jury shall be preserved." This clause, which was not in the original Constitution, was suggested by the very spirit of Freedom. At the close of the National Convention, Elbridge Gerry refused to sign the Constitution, because among other things, it established "a tribunal *without juries*, a Star Chamber as to civil cases." Many united in his opposition, and on the recommendation of the First Congress this additional safeguard was adopted as an amendment.

Now, regarding the question as one of property, or of Personal Liberty, in either alternative the Trial by Jury is secured. For this position authority is ample. In the debate on the Fugitive Slave Bill of 1817–'18, a Senator from South Carolina, Mr. Smith, anxious for the asserted right of property, objected, on this very floor, to a reference of the question, under the writ of Habeas Corpus, to a judge without a jury. Speaking solely for property, these were his words:

"This would give the Judge the sole power of deciding *the right of property the master claims in his slaves, instead of trying that right by a jury, as prescribed by the Constitution.* He would be judge of matters of law and matters of fact; clothed with all the powers of a court. Such a principle is unknown in your system of jurisprudence. *Your Constitution has forbid it.* It preserves the right of Trial by Jury in all cases where the value in controversy exceeds twenty dollars."—(Debates in *National Intelligencer*, June 15, 1818.)

But this provision has been repeatedly discussed by the Supreme Court, so that its meaning is not open to doubt. Three conditions are necessary. *First*, the proceedings must be "a suit;" *secondly*, "at common law;" and *thirdly*, "where the value in controversy exceeds twenty dollars." In every such case "the right of Trial by Jury *shall* be preserved." The decisions of the Supreme Court expressly touch each of these points.

First. In the case of *Cohens* vs. *Virginia*, (6 Wheaton, 407,) the Court say: "What is *a suit?* We understand it to be the prosecution of some *claim*, demand, or request." Of course, then, the "claim" for a fugitive must be "a suit."

Secondly. In the case of *Parsons* vs. *Bedford*, (3 Peters, 456,) while considering this very clause, the Court say: "By *common law* is meant not merely suits which the common law recognised among its old and settled proceedings, but suits in which *legal rights* were to be ascertained and determined. In a just sense, the Amendment may well be construed to embrace all suits, which are not of Equity or Admiralty jurisdiction, *whatever may be the peculiar form which they may assume to settle legal rights.*" Now, since the claim for a fugitive is not a suit in Equity or Admiralty, but a suit to settle what are called legal rights, it must, of course, be "a suit at common law."

Thirdly. In the case of *Lee* vs. *Lee*, (8 Peters, 44,) on a question whether "the value in controversy" was "one thousand dollars and upwards," it was objected that the appellants, who were petitioners for Freedom, were not of the value of one thousand dollars. But the Court said: "The matter in dispute is the Freedom of the petitioners. *This is not susceptible of pecuniary valuation.* No doubt is entertained of the jurisdiction of the Court." Of course, then, since liberty is above price, the claim to any fugitive always and necessarily presumes that "the value in controversy exceeds twenty dollars."

By these successive steps, sustained by decisions of the highest tribunal, it appears, as in a diagram, that the right of Trial by Jury is secured to the fugitive from labor.

This conclusion needs no further authority; but it may receive curious illustration from the ancient records of the common law, so familiar and dear to the framers of the Constitution. It is said by Mr. Burke, in his magnificent speech on Conciliation with America, that "nearly as many of Blackstone's Commentaries were sold in America as in England," carrying thither the knowledge of those vital principles of Freedom, which were the boast of the British Constitution. Imbued by these, the earliest Continental Congress, in 1774, declared, "that the respective Colonies are entitled to the common law of England, and especially to the great and inestimable privilege of being tried by their peers of the vicinage according to the course of that law." Thus, amidst the troubles which heralded the Revolution, the common law was claimed by our fathers as a birthright.

Now although the common law may not be approached as a source of jurisdiction under the National Constitution—and on this point I do not dwell—*it is clear that it may be employed in*

determining the meaning of technical terms in the Constitution borrowed from this law. This, indeed, is expressly sanctioned by Mr. Madison, in his celebrated report of 1799, while restraining the extent to which the common law may be employed. Thus by this law we learn the nature of *Trial by Jury*, which, though secured, is not described by the Constitution: also of *Bills of Attainder*, the *Writ of Habeas Corpus*, and *Impeachment*, all technical terms of the Constitution borrowed from the common law. By this law, and its associate Chancery, we learn what are *cases in law and equity* to which the judicial power of the United States is extended. These instances I adduce merely by way of example. Of course also in the same way we learn what in reality are *suits at common law*.

Now, on principle and authority, *a claim for the delivery of a fugitive slave is a suit at common law*, and is embraced naturally and necessarily in this class of judicial proceedings. This proposition can be placed beyond question. And here, especially, let me ask the attention of all learned in the law. On this point, as on every other in this argument, I challenge inquiry and answer.

History painfully records that during the early days of the common law, and down even to a late period, a system of slavery existed in England, known under the name of *villainage*. The slave was generally called a *villain*, though, in the original Latin forms of judicial proceedings, *nativus*, implying slavery by birth. The incidents of this condition have been minutely described, and also the mutual remedies of master and slave, all of which were regulated by the common law. Slaves sometimes then, as now, *escaped* from their masters. The claim for them after such *escape* was prosecuted by a "suit at common law," to which, as to every suit at common law, the Trial by Jury was necessarily attached. Blackstone, in his Commentaries, (Vol. II, p. 93,) in words which must have been known to all the lawyers of the Convention, said of *villains:* "They could not leave their lord without his permission, but *if they ran away*, or were purloined from him, *might be* CLAIMED *and recovered by* ACTION, *like beasts or other cattle.*" This very word "action" of itself implies "a suit at common law" with Trial by Jury.

From other sources we learn precisely what the *action* was. That great expounder of the ancient law, Mr. Hargrave, says, "the Year Books and Books of Entries are full of the forms used in pleading a title to villains." Though no longer of practical value in England, they remain as monuments of jurisprudence, and as mementoes of a barbarous institution. He thus describes the remedy of the master at common law:

"The lord's remedy for a *fugitive villain* was, either by seizure or by suing out a writ of *Nativo Habendo*, or Neidy, as it is sometimes called. If the lord seized, the villain's most effectual mode of recovering liberty was by the writ of *Homine Replegiando*, which had great advantage over the writ of Habeas Corpus. In the *Habeas Corpus* the return cannot be contested by pleading against the truth of it, and consequently on a *Habeas Corpus the question of liberty cannot go to a jury for trial.* But in the *Homine Replegiando* it was otherwise. The plaintiff, on the defendant's pleading villainage, had the same opportunity of contesting it, as when impleaded by the lord in a *Nativo Habendo*. If the lord sued out a *Nativo Habendo*, and the villainage was denied, in which case the sheriff could not seize the villain, *the lord was then to enter his plaint in the county court*, and as the sheriff was not allowed to try the question of villainage in his court, the lord could not have any benefit from the writ, without removing the cause by this writ of *Pone* into the King's Bench or Common Pleas."—(20 Howell's State Trials, 38 *note.*)

The authority of Mr. Hargrave is sufficient. But I desire to place this matter beyond all cavil. From the Digest of Lord Chief Baron Comyns, which, at the adoption of the Constitution, was one of the classics of our jurisprudence, I derive another description of the remedy of the master:

"If the lord claims an inheritance in his villain, *who flies from his lord against his will*, and lives in a place out of the manor, to which he is regardant, the lord shall have a *Nativo Habendo*. And upon such writ, directed to the sheriff, he may seize him who does not deny himself to be a villain. But if the defendant say that he is a Free Man, the sheriff cannot seize him, but the lord must remove the writ by *Pone* before the Justices *in Eire*, or in C. B., *where he must count upon it.*"—(Comyns' Digest—Villainage, C. 1.)

An early writer of peculiar authority, Fitzherbert, in his *Natura Brevium*, on the writs of the common law, thus describes these proceedings:

"The writ *de Nativo Habendo* lieth for the lord who claimeth inheritance in any villain, *when his villain is run from him*, and is remaining within any place out of the manor unto which he is regardant, or when he departeth from his lord against the lord's will; and the writ shall be directed to the sheriff. And the sheriff may seize the villain, and deliver him unto his lord, if the villain confess unto the sheriff that he is his villain; but if the villain say to the sheriff that he is frank, then it seemeth that the sheriff ought not to seize him, as it is in a replevin, if the defendant claim property, the sheriff cannot replevy the cattle, but the party ought to sue a writ *de Proprietate Probanda*; and so if the villain say that he is a freeman, &c., then the sheriff ought not to seize him, but then the lord ought to sue a *Pone* to remove the plea before the justices of the Common Pleas, or before the justices in eyre. But if the villain purchase a writ *de Libertate Probanda* before the lord hath sued the *Pone* to remove the plea before the justices, then that writ of *Libertate Probanda* is a *Supersedeas* unto the lord, that he proceed not upon the writ *Nativo Habendo* till the eyre of the justices, and that the lord ought not to seize the villain in the mean time."—(Vol. I, p. 76.)

These authorities are not merely applicable to the general question of freedom; but they distinctly contemplate the case of *fugitive* slaves, and the "suits at common law" for their rendition. Blackstone speaks of villains who "ran away;" Hargrave of "fugitive villains;"

Comyns of a villain "who flies from his lord against his will;" and Fitzherbert of the proceedings of the lord "when his villain is run from him." The forms, writs, counts, pleadings, and judgments, in these suits, are all preserved among the precedents of the common law. The writs are known as original writs which the party on either side, at the proper stage, could sue out of right without showing cause. The writ of *Libertate Probanda* for a fugitive slave was in this form:

"*Libertate Probanda.*

"The king to the sheriff, &c. A. and B. her sister, have showed unto us, that whereas they are free women, and ready to prove their liberty, F. claiming them to be his niefs unjustly, vexes them; and therefore we command you, that if the aforesaid A. and B. shall make you secure touching the proving of their liberty, then put that plea before our justices at the first assizes, when they shall come into those parts, because proof of this kind belongeth not to you to take; and in the mean time cause the said A. and B. to have peace thereupon, and tell the aforesaid F. that he may be there, if he will, to prosecute his plea thereof against the aforesaid A. and B. And have there this writ. Witness, &c."—(*Fitzherbert*, Vol. I, p. 77.)

By these various proceedings, all ending in Trial by Jury, Personal Liberty was guarded, even in the early, unrefined, and barbarous days of the common law. Any person claimed as a fugitive slave might invoke this Trial as a sacred right. Whether the master proceeded by seizure, as he might, or by legal process, the Trial by Jury in a suit at common law, before one of the high courts of the realm, was equally secured. In the case of seizure, the fugitive, reversing the proceedings, might institute process against his master and appeal to a court and jury. In the case of process by the master, the watchful law secured to the fugitive the same protection. By no urgency of force, by no device of process, could any person claimed as a slave be defrauded of this Trial. Such was the common law. If its early boast, that there could be no slaves in England, fails to be true, this at least may be its pride, that, according to its indisputable principles, the Liberty of every man was placed under the guard of Trial by Jury.

These things may seem new to us; but they must have been known to the members of the Convention, particularly to those from South Carolina, through whose influence the provision on this subject was adopted. Charles Cotesworth Pinckney and Mr. Rutledge had studied law at the Temple, one of the English Inns of Court. It would be a discredit to them, and also to other learned lawyers, members of the Convention, to suppose that they were not conversant with the principles and precedents directly applicable to this subject, all of which are set down in works of acknowledged weight, and at that time of constant professional study. Only a short time before, in the case of *Somersett*, they had been most elaborately examined in Westminster Hall. In a forensic effort of unsurpassed learning and elevation, which of itself vindicates for its author his great juridical name, Mr. Hargrave had fully made them known to such as were little acquainted with the more ancient sources. But even if we could suppose them unknown to the lawyers of the Convention, they are none the less applicable in determining the true meaning of the Constitution.

The conclusion from this examination is explicit. Clearly and indisputably, in England, the country of the common law, a claim for a fugitive slave was "a suit at common law," recognised "among its old and settled proceedings." To question this, in the face of authentic principles and precedents, would be preposterous. As well might it be questioned, that a writ of replevin for a horse, or a writ of right for land, was "a suit at common law." It follows, then, that this *technical term* of the Constitution, read in the illumination of the common law, naturally and necessarily embraces proceedings for the recovery of fugitive slaves, *if any such be instituted or allowed under the Constitution*. And thus, by the letter of the Constitution, in harmony with the requirements of the common law, all such persons, when claimed by their masters, are entitled to a Trial by Jury.

Such, sir, is the argument, briefly uttered, against the constitutionality of the Slave Act. Much more I might say on this matter; much more on the two chief grounds of objection which I have occupied. But I am admonished to hasten on.

Opposing this Act as doubly unconstitutional from a want of power in Congress and from a denial of Trial by Jury, I find myself again encouraged by the example of our Revolutionary Fathers, in a case which is one of the landmarks of history. The parallel is important and complete. In 1765, the British Parliament, by a notorious statute, attempted to draw money from the colonies through a stamp tax, while the determination of certain questions of forfeiture under the statute was delegated—not to the courts of common law—but to courts of Admiralty without a jury. The Stamp Act, now execrated by all lovers of liberty, had this extent and no more. Its passage was the signal for a general flame of opposition and indignation throughout the Colonies. It was denounced as contrary to the British Constitution on two principal grounds; *first*, as a usurpation by Parliament of powers not belonging to it, and an infraction of rights secured to the Colonies; and *secondly*, as a denial of Trial by Jury in certain cases of property.

The public feeling was variously expressed. At Boston, on the arrival of the stamps, the shops were closed, the bells of the churches tolled, and the flags of the ships hung at half-mast. At Portsmouth, in New Hampshire, the bells were tolled, and notice given to the

friends of Liberty to hold themselves in readiness to attend her funeral. At New York a letter was received from Franklin, then in London, written on the day after the passage of the Act, in which he said: "The sun of liberty is set." The obnoxious Act, headed "Folly of England and Ruin of America," was contemptuously hawked through the streets. The merchants of New York, inspired then by Liberty, resolved to import no more goods from England until the repeal of the Act; and their example was followed shortly afterwards by the merchants of Philadelphia and Boston. Bodies of patriots were organized everywhere under the name of "Sons of Liberty." The orators also spoke. James Otis with fiery tongue appealed to Magna Charta.

Of all the States, Virginia—whose shield bears the image of Liberty trampling upon chains—first declared herself by solemn resolutions, which the timid thought "treasonable;" but which soon found a response. New York followed. Massachusetts came next, speaking by the pen of the inflexible Samuel Adams. In an Address from the Legislature to the Governor, the true grounds of opposition to the Stamp Act, coincident with the two radical objections to the Slave Act, are clearly set forth:

"You are pleased to say that the Stamp Act is an act of Parliament, and as such ought to be observed. This House, sir, has too great reverence for the Supreme Legislature of the nation, *to question its just authority.* It by no means appertains to us to presume to adjust the boundaries of the *power* of Parliament; *but boundaries there undoubtedly are.* We hope we may, without offence, put your Excellency in mind of that most grievous sentence of excommunication solemnly denounced by the Church in the name of the sacred Trinity, in the presence of King Henry the Third and the estates of the realm, *against all those who should make statutes* OR OBSERVE THEM, BEING MADE, *contrary to the liberties of Magna Charta.* The Charter of this province invests the General Assembly with the *power* of making laws for its internal government and taxation; and this Charter has never been forfeited. The Parliament has a right to make all laws within the limits of their own constitution." * * * "The people complain that the Act vests a single judge of Admiralty with a power to try and determine their property in controversies arising from internal concerns, *without a jury,* contrary to the very expression of Magna Charta, that no freeman shall be amerced, but by the oath of good and lawful men of the vicinage." * * * "We deeply regret that the Parliament has seen fit to pass such an act as the Stamp Act; we flatter ourselves that the hardships of it will shortly appear to them in such a light, as shall induce them in their wisdom to repeal it; *in the mean time, we must beg your Excellency to excuse us from doing anything to assist in the execution of it.*"

Thus in those days spoke Massachusetts! The parallel still proceeds. The unconstitutional Stamp Act was welcomed in the Colonies by the Tories of that day precisely as the unconstitutional Slave Act has been welcomed by large and imperious numbers among us. Hutchinson, at that time Lieutenant Governor and Judge in Massachusetts, wrote to Ministers in England: "The Stamp Act is received with as much decency as could be expected. It leaves no room for evasion, and will execute itself." Like the judges of our day, in charges to grand juries he resolutely vindicated the Act, and admonished "the jurors and the people" to obey. Like Governors of our day, Bernard, in his speech to the Legislature of Massachusetts, demanded unreasoning submission. "I shall not," says this British Governor, "enter into any disquisition of the policy of this Act. I have only to say it is an act of the Parliament of Great Britain; and I trust that the supremacy of that Parliament over all the members of their wide and diffused empire never was and never will be denied within these walls." Like marshals of our day, the officers of the Customs made "application for a military force to assist them in the execution of their duty." The military were against the people. A British major of artillery at New York exclaimed, in tones not unlike those now sometimes heard: "I will cram the stamps down their throats with the end of my sword." The elaborate answer of Massachusetts—a paper of historic grandeur—drawn by Samuel Adams, was pronounced "the ravings of a parcel of wild enthusiasts."

Thus in those days spoke the partisans of the Stamp Act. But their weakness soon became manifest. In the face of an awakened community, where discussion has free scope, no men, though surrounded by office and wealth, can long sustain injustice. Earth, water, nature, they may subdue; but Truth they cannot subdue. Subtle and mighty, against all efforts and devices, it fills every region of light, with its majestic presence. The Stamp Act was discussed and understood. Its violation of constitutional rights was exposed. By resolutions of Legislatures and of town meetings, by speeches and writings, by public assemblies and processions, the country was rallied in peaceful phalanx *against the execution of the Act.* To this great object, within the bounds of law and the constitution, were bent all the patriot energies of the land.

And here Boston took the lead. Her records at this time are full of proud memorials. In formal instructions to her representatives, adopted unanimously, "having been read several times," in Town Meeting at Faneuil Hall, the following rule of conduct was prescribed:

"We, therefore, think it our indispensable duty, in Justice to ourselves and Posterity, as it is our undoubted Privilege, in the most open and unreserved, but decent and respectful Terms, to declare our greatest Dissatisfaction with this Law. *And we think it incumbent upon you by no Means to join in any public Measures for countenancing and assisting in the execution of the same.* But to use your best endeavors in the General Assembly to have the inherent inalienable Rights of the People of this Province asserted, and vindicated, and left upon the public record, that Posterity may never have reason to charge the present Times with the Guilt of tamely giving them away."

Virginia responded to Boston. Many of her justices of the peace surrendered their commissions "rather than aid in the enforcement of the law or be instrumental in the overthrow of their country's liberties."

As the opposition deepened, its natural tendency was to outbreak and violence. But this was carefully restrained. On one occasion in Boston it showed itself in the lawlessness of a mob. But the town, at a public meeting in Faneuil Hall, called without delay on the motion of the opponents of the Stamp Act, with James Otis as chairman, condemned the outrage. Eager in hostility to the execution of the Act, Boston cherished municipal order, and constantly discountenanced all tumult, violence, and illegal proceedings. Her equal devotion to these two objects drew the praises and congratulations of other towns. In reply, March 27th, 1766, to an Address from the inhabitants of Plymouth, her own consciousness of duty done is thus expressed:

"If the inhabitants of Boston have taken *the legal and warrantable measures to prevent that misfortune of all others the most to be dreaded, the execution of the Stamp Act*, and as a necessary means of preventing it have made any spirited applications for opening the custom-houses and courts of justice: if *at the same time they have borne their testimony against outrageous tumults and illegal proceedings*, and given any example of the Love of Peace and good order, next to the consciousness of having done their duty is the satisfaction of meeting with the approbation of any of their fellow-countrymen."

Learn now from the Diary of John Adams the results of this system:

"The year 1765 has been the most remarkable year of my life. That enormous engine, fabricated by the British Parliament, for battering down all the rights and liberties of America—I mean the Stamp Act—has raised and spread through the whole continent a spirit that will be recorded to our honor with all future generations. In every Colony, from Georgia to New Hampshire inclusively, the stamp distributors and inspectors have been compelled by the unconquerable rage of the people to renounce their offices. Such and so universal has been the resentment of the people, that every man who has dared to speak in favor of the stamps, or to soften the detestation in which they are held, how great soever his abilities and virtues had been esteemed before, or whatever his fortune, connections, and influence had been, has been seen to sink into universal contempt and ignominy."

The Stamp Act became a dead letter. At the meeting of Parliament numerous petitions were presented, calling for its instant repeal. Franklin, at that time in England, while giving his famous testimony before the House of Commons, was asked whether he thought the people of America would submit to this Act if modified. His brief emphatic response was: "No, never, unless compelled by force of arms." Chatham, yet weak with disease, but mighty in eloquence, exclaimed in ever-memorable words: "We are told America is obstinate—America is almost in open rebellion. Sir, *I rejoice that America has resisted.* Three millions of people so dead to all the feelings of liberty, as voluntarily to submit to be slaves, would have been fit instruments to make slaves of all the rest. The Americans have been wronged; they have been driven to madness. I will beg leave to tell the House in a few words what is really my opinion. *It is that the Stamp Act be repealed, absolutely, totally, and immediately.*" It was repealed. Within less than a year from its original passage, denounced and discredited, it was driven from the Statute Book. In the charnel-house of history, with the unclean things of the Past, it now rots. Thither the Slave Act is destined to follow.

Sir, regarding the Stamp Act candidly and cautiously, free from the animosities of the time, it is impossible not to see that, though gravely unconstitutional, it was at most an infringement of *civil* liberty only; not of *personal* liberty. There was an unjust tax of a few pence, with the chances of amercements by a single judge without a jury; but, by no provision of this Act was the *personal* liberty of any man assailed. Under it no freeman could be seized as a slave. Such an act, though justly obnoxious to every lover of constitutional Liberty, cannot be viewed with the feelings of repugnance, enkindled by a statute, which assails the personal liberty of every man, and under which any freeman may be seized as a slave. Sir, in placing the Stamp Act by the side of the Slave Act, I do injustice to that enactment of British tyranny. Both, indeed, infringe important rights; one of property; the other the vital right of all, which is to other rights as the soul to the body—*the right of a man to himself.* Both are condemned; but their relative condemnation must be measured by their relative characters. As Freedom is more than property; as Man is above the dollar that he earns; as Heaven, to which we all aspire, is higher than the earth, where every accumulation of wealth must ever remain; so are the rights assailed by an American Congress higher than those once assailed by the British Parliament. And just in this degree must history condemn the Slave Act more than the Stamp Act.

Sir, I might here stop. It is enough in this place, and on this occasion, to show the unconstitutionality of this enactment. Your duty commences at once. All legislation hostile to the fundamental law of the land should be repealed without delay. But the argument is not yet exhausted. Even if this Act could claim any validity or apology under the Constitution, which it cannot, *it lacks that essential support in the Public Conscience of the States, where it is to be enforced, which is the life of all law, and without which any law must become a dead letter.*

The Senator from South Carolina [Mr. Butler] was right, when, at the beginning of the session, he pointedly said that a law which

could be enforced only by the bayonet, was no law. Sir, it is idle to suppose that an Act of Congress becomes effective, merely by compliance with the forms of legislation. Something more is necessary. The Act must be in harmony with the prevailing public sentiment of the community upon which it bears. Of course, I do not suggest that the cordial support of every man or of every small locality is necessary; but I do mean that the public feelings, the public convictions, the public conscience, must not be touched, wounded, lacerated, by every endeavor to enforce it. With all these it must be so far in harmony, that, like other laws, by which property, liberty, and life, are guarded, it may be administered by the ordinary process of the courts, without jeoparding the public peace or shocking good men. If this be true as a general rule—if the public support and sympathy be essential to the life of all law, this is especially the case in an enactment which concerns the important and sensitive rights of Personal Liberty. In conformity with this principle the Legislature of Massachusetts, by formal resolution, in 1850, with singular unanimity, declared:

"We hold it to be the duty of Congress to pass such laws only in regard thereto as will be maintained by the sentiments of the Free States, where such laws are to be enforced."

The duty of consulting these sentiments was recognised by Washington. While President of the United States, at the close of his Administration, he sought to recover a slave, who had fled to New Hampshire. His autograph letter to Mr. Whipple, the Collector of Portsmouth, dated at Philadelphia, 28th November, 1796, which I now hold in my hand, and which has never before seen the light, after describing the fugitive, and particularly expressing the desire of "her mistress," Mrs. Washington, for her return, employs the following decisive language:

"I do not mean, however, by this request, that such violent measures should be used AS WOULD EXCITE A MOB OR RIOT, WHICH MIGHT BE THE CASE IF SHE HAS ADHERENTS, OR EVEN UNEASY SENSATIONS IN THE MINDS OF WELL-DISPOSED CITIZENS. Rather than either of these should happen, I would forego her services altogether: and the example also, which is of infinite more importance.

"GEORGE WASHINGTON."

Mr. Whipple, in his reply, dated at Portsmouth, December 22, 1796, an autograph copy of which I have, recognises the rule of Washington:

"I will now, sir, agreeably to your desire, send her to Alexandria, *if it be practicable without the consequences which you except—that of exciting a riot or a mob, or creating uneasy sensations in the minds of well-disposed persons.* The first cannot be calculated beforehand: it will be governed by the popular opinion of the moment, or the circumstances that may arise in the transaction. The latter may be sought into and judged of by conversing with such persons without discovering the occasion. So far as I have had opportunity, I perceive that different sentiments are entertained on this subject."

The fugitive never was returned: but lived in freedom to a good old age, down to a very recent period, a monument of the just forbearance of him whom we aptly call the Father of his Country. It is true that he sought her return. This we must regret, and find its apology. He was at the time a slaveholder. Though often with various degrees of force expressing himself against slavery, and promising his suffrage for its abolition, he did not see this wrong as he saw it at the close of life, in the illumination of another sphere. From this act of Washington, still swayed by the policy of the world, I appeal to Washington writing his will. From Washington on earth I appeal to Washington in Heaven. Seek not by his name to justify any such effort. His death is above his life. His last testament cancels his authority as a slaveholder. However he may have appeared before man, he came into the presence of God only as the liberator of his slaves. Grateful for this example, I am grateful also, that while a slaveholder, and seeking the return of a fugitive, he has left in permanent record a rule of conduct which, if adopted by his country, will make Slave-Hunting impossible. The chances of a riot or mob, or "even uneasy sensations among well-disposed persons," are to prevent any such pursuit.

Sir, the existing Slave Act cannot be enforced without violating the precept of Washington. Not merely "uneasy sensations of well-disposed persons," but rage, tumult, commotion, mob, riot, violence, death, gush from its fatal overflowing fountains:

——— hoc fonte derivata clades
In patriam populumque fluxit.

Not a case occurs without endangering the public peace. Workmen are brutally dragged from employments to which they are wedded by years of successful labor; husbands are ravished from wives, and parents from children. Everywhere there is disturbance: at Detroit, Buffalo, Harrisburgh, Syracuse, Philadelphia, New York, Boston. At Buffalo the fugitive was cruelly knocked by a log of wood against a red-hot stove, and his mock trial commenced while the blood still oozed from his wounded head. At Syracuse he was rescued by a sudden mob; so also at Boston. At Harrisburgh the fugitive was shot; at Christiana the Slave-Hunter was shot. At New York unprecedented excitement, always with uncertain consequences, has attended every case. Again at Boston a fugitive, according to the received report, was first basely seized under pretext that he was a criminal; arrested only after a deadly struggle; guarded by officers who acted in violation of the laws of the State; tried in a Court House surrounded by chains contrary to the common law; finally surrendered to Slavery by trampling on the criminal process of the State, under an escort in violation again of the laws of the State, while the pulpits trembled and the whole

people, not merely "uneasy," but swelling with ill-suppressed indignation, for the sake of order and tranquillity, without violence witnessed the shameful catastrophe.

With every attempt to administer the Slave Act, it constantly becomes more revolting, particularly in its influence on the agents it enlists. Pitch cannot be touched without defilement, and all who lend themselves to this work seem at once and unconsciously to lose the better part of man. The spirit of the law passes into them, as the devils entered the swine. Upstart commissioners, the mere mushrooms of courts, vie and revie with each other. Now by indecent speed, now by harshness of manner, now by a denial of evidence, now by crippling the defence, and now by open glaring wrong, they make the odious Act yet more odious. Clemency, grace, and justice, die in its presence. All this is observed by the world. Not a case occurs which does not harrow the souls of good men, and bring tears of sympathy to the eyes, also those other noble tears which "patriots shed o'er dying laws."

Sir, I shall speak frankly. If there be an exception to this feeling, it will be found chiefly with a peculiar class. It is a sorry fact that the "mercantile interest," in its unpardonable selfishness, twice in English history, frowned upon the endeavors to suppress the atrocity of Algerine Slavery; that it sought to baffle Wilberforce's great effort for the abolition of the African slave trade; and that, by a sordid compromise, at the formation of our Constitution, it exempted the same detested Heaven-defying traffic from American judgment. And now representatives of this "interest," forgetful that commerce is the child of Freedom, join in hunting the Slave. But the great heart of the people recoils from this enactment. It palpitates for the fugitive, and rejoices in his escape. Sir, I am telling you facts. The literature of the age is all on his side. The songs, more potent than laws, are for him. The poets, with voices of melody, are for Freedom. Who could sing for Slavery? They who make the permanent opinion of the country, who mould our youth, whose words, dropped into the soul, are the germs of character, supplicate for the Slave. And now, sir, behold a new and heavenly ally. A woman, inspired by Christian genius, enters the lists, like another Joan of Arc, and with marvellous power sweeps the chords of the popular heart. Now melting to tears, and now inspiring to rage, her work everywhere touches the conscience, and makes the Slave-Hunter more hateful. In a brief period, nearly 100,000 copies of *Uncle Tom's Cabin* have been already circulated. But this extraordinary and sudden success—surpassing all other instances in the records of literature—cannot be regarded merely as the triumph of genius. Higher far than this, it is the testimony of the people, by an unprecedented act, against the Fugitive Slave Bill.

These things I dwell upon as the incentives and tokens of an existing public sentiment, which renders this Act practically inoperative, except as a tremendous engine of terror. Sir, the sentiment is just. Even in the lands of slavery, the slave-trader is loathed as an ignoble character, from whom the countenance is turned away; and can the Slave-Hunter be more regarded while pursuing his prey in a land of Freedom? In early Europe, in barbarous days, while Slavery prevailed, a Hunting Master, *nach jagender Herr*, as the Germans called him, was held in aversion. Nor was this all. The fugitive was welcomed in the cities, and protected against the pursuit. Sometimes vengeance awaited the Hunter. Down to this day, at Revel, now a Russian city, a sword is proudly preserved with which a Hunting Baron was beheaded, who, in violation of the municipal rights of this place, seized a fugitive slave. Hostile to this Act as our public sentiment may be, it exhibits no trophy like this. The State laws of Massachusetts have been violated in the seizure of a fugitive slave; but no sword, like that of Revel, now hangs at Boston.

I have said, sir, that this sentiment is just. And is it not? Every escape from Slavery necessarily and instinctively awakens the regard of all who love Freedom. The endeavor, though unsuccessful, reveals courage, manhood, character. No story is read with more interest than that of our own Lafayette, when, aided by a gallant South Carolinian, in defiance of the despotic ordinances of Austria, kindred to our Slave Act, he strove to escape from the bondage of Olmutz. Literature pauses with exultation over the struggles of Cervantes, the great Spaniard, while a slave in Algiers, to regain the liberty for which he says, in his immortal work, "we ought to risk life itself. Slavery being the greatest evil that can fall to the lot of man." Science, in all her manifold triumphs, throbs with pride and delight, that Arago, the astronomer and philosopher—devoted republican also—was redeemed from barbarous Slavery to become one of her greatest sons. Religion rejoices serenely, with joy unspeakable, in the final escape of Vincent de Paul. Exposed in the public square of Tunis to the inspection of the traffickers in human flesh, this illustrious Frenchman was subjected to every vileness of treatment, like a horse, compelled to open his mouth, to show his teeth, to trot, to run, to exhibit his strength in lifting burthens, and then, like a horse, legally sold in market overt. Passing from master to master, after a protracted servitude, he achieved his freedom, and regaining France, commenced that resplendent career of charity by which he is placed among the great names of Christendom. Princes and orators have lavished panegyrics upon this fugitive slave; and the Catholic Church, in homage to his extraordinary virtues, has introduced him into the company of saints.

Less by genius or eminent services, than by sufferings, are the fugitive slaves of our country now commended. For them every sentiment of humanity is aroused;

> ——— "Who could refrain
> That had a heart to love, and in that heart
> Courage to make his love known?"

Rude and ignorant they may be; but in their very efforts for Freedom, they claim kindred with all that is noble in the Past. They are among the heroes of our age. Romance has no stories of more thrilling interest than theirs. Classical antiquity has preserved no examples of adventurous trial more worthy of renown. Among them are men whose names will be treasured in the annals of their race. By the eloquent voice they have already done much to make their wrongs known, and to secure the respect of the world. History will soon lend them her avenging pen. Proscribed by you during life, they will proscribe you through all time. Sir, already judgment is beginning. A righteous public sentiment palsies your enactment.

And now, sir, let us review the field over which we have passed. We have seen that any compromise, finally closing the discussion of Slavery under the Constitution, is tyrannical, absurd, and impotent; that as Slavery can exist only by virtue of positive law, and as it has no such positive support in the Constitution, it cannot exist within the National jurisdiction; that the Constitution nowhere recognises property in man, and that, according to its true interpretation, Freedom and not Slavery is national, while Slavery and not Freedom is sectional; that, in this spirit, the National Government was first organized under Washington, himself an Abolitionist, surrounded by Abolitionists, while the whole country, by its Church, its Colleges, its Literature, and all its best voices, was united against Slavery, and the national flag at that time nowhere within the National Territory covered a single slave; still further, that the National Government is a Government of delegated powers, and as among these there is no power to support Slavery, this institution cannot be national, nor can Congress in any way legislate in its behalf; and, finally, that the establishment of this principle is the true way of peace and safety for the Republic. Considering next the provision for the surrender of fugitives from labor, we have seen that it was not one of the original compromises of the Constitution; that it was introduced tardily and with hesitation, and adopted with little discussion, and then and for a long period after was regarded with comparative indifference; that the recent Slave Act, though many times unconstitutional, is especially so on two grounds—*first*, as a usurpation by Congress of powers not granted by the Constitution, and an infraction of rights secured to the States; and *secondly*, as a denial of Trial by Jury, in a question of Personal Liberty and a suit at common law; that its glaring unconstitutionaly finds a prototype in the British Stamp Act, which our fathers refused to obey as unconstitutional on two parallel grounds—*first*, because it was a usurpation by Parliament of powers not belonging to it under the British Constitution and an infraction of rights belonging to the Colonies; and *secondly*, because it was a denial of Trial by Jury in certain cases of property; that as Liberty is far above property, so is the outrage perpetrated by the American Congress far above that perpetrated by the British Parliament; and, finally, that the Slave Act has not that support in the public sentiment of the States where it is to be executed, which is the life of all law, and which prudence and the precept of Washington require.

Sir, thus far I have arrayed the objections to this Act, and the false interpretations out of which it has sprung. But I am asked what I offer as a substitute for the legislation which I denounce. Freely I will answer. It is to be found in a correct appreciation of the provision of the Constitution, under which this discussion occurs. Look at it in the double light of reason and of Freedom, and we cannot mistake the exact extent of its requirements. Here is the provision:

> "No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due."

From the very language employed it is obvious that this is merely a *compact* between the States, with a *prohibition* on the States, *conferring no power on the nation*. In its natural signification it is a compact. According to the examples of other countries, and the principles of jurisprudence, it is a compact. All arrangements for the extradition of fugitives have been customarily compacts. Except under the express obligations of treaty, no nation is bound to surrender fugitives. Especially has this been the case with fugitives for Freedom. In medieval Europe, cities refused to recognise this obligation in favor of persons even under the same National Government. In 1531, while the Netherlands and Spain were united under Charles V, the Supreme Council of Mechlin rejected an application from Spain for the surrender of a fugitive slave. By express compact alone could this be secured. But the provision of the Constitution was borrowed from the Ordinance of the Northwestern Territory, which is expressly declared to be a compact; and this Ordinance, finally drawn by Nathan Dane, was again borrowed in its distinctive features from the early institutions of Massachusetts, among which, as far back as 1643, was a compact of like nature with other New England States. Thus this provision is a com-

pact in language, in nature, in its whole history: as we have already seen it is a compact, according to the intentions of our Fathers and the genius of our institutions.

As a compact its execution depends absolutely upon the States, without any intervention of the Nation. *Each State, in the exercise of its own judgment, will determine for itself the precise extent of the obligations assumed.* As a compact in derogation of Freedom, it must be construed strictly in every respect—leaning always in favor of Freedom, and shunning any meaning, not clearly necessary, which takes away important personal rights; mindful that the parties to whom it is applicable are regarded as "persons," of course with all the rights of "persons" under the Constitution; especially mindful of the vigorous maxim of the common law, "that he is cruel and impious who does not always favor Freedom;" and also completely adopting in letter and in spirit, as becomes a just people, the rules of the great Commentator, that "the law is always ready to catch at anything in favor of Liberty." With this key the true interpretation is natural and easy.

Briefly, the States are prohibited from any "law or regulation" by which any "person" escaped from "service or labor" may be discharged therefrom, and on establishment of the claim to such "service or labor," he is to be delivered up. But the mode by which the claim is to be tried and determined is not specified. All this is obviously within the control of each State. It may be done by virtue of express legislation, in which event any Legislature, justly careful of Personal Liberty, would surround the fugitive with every shield of the law and Constitution. But here a fact, pregnant with Freedom, must be studiously observed. The name Slave—that Ptany of wrong and woe—does not appear in the clause. Here is no unambiguous phrase, incapable of a double sense; no "positive" language, applicable only to slaves, and excluding all other classes; no word of that absolute certainty, in every particular, which forbids any interpretation except that of Slavery, and makes it impossible "to catch at anything in favor of Liberty." Nothing of this kind is here. But passing from this; "cruelly and impiously" renouncing for the moment all leanings for Freedom; refusing "to catch at anything in favor of Liberty;" abandoning the cherished idea of the Fathers, that "it was *wrong* to admit in the Constitution the idea of property in man;" and, in the face of these commanding principles, assuming two things—first, that, in the evasive language of this Clause, the Convention, whatever may have been the aim of individual members, really intended fugitive slaves, which is sometimes questioned—and, secondly, that, if they so intended, the language employed can be judicially regarded as justly applicable to fugitive slaves, which is often and earnestly denied—then the whole proceeding, without any express legislation, may be left to the ancient and authentic forms of the common law, familiar to the framers of the Constitution and ample for the occasion. If the fugitive be seized without process, he will be entitled at once to his writ *de Homine Replegiando*, while the master, resorting to process, may find his remedy in the writ *de Nativo Habendo*—each writ requiring Trial by Jury. If from ignorance or lack of employment these processes have slumbered in our country, still they belong to the great arsenal of the common law, and continue, like other ancient writs, *tanquam gladium in vagina*, ready to be employed at the first necessity. They belong to the safeguards of the citizen. But in any event and in either alternative the proceedings would be by "suit at common law," with Trial by Jury; and it would be the solemn duty of the court, according to all the forms and proper delays of the common law, to try the case on the evidence; strictly to apply all the protecting rules of evidence, and especially to require stringent proof, by competent witnesses under cross-examination, that the person claimed was *held* to service; that his service was *due* to the claimant; that he had *escaped* from the State where such service was due; and also proof of the *laws* of the State under which he was held. *Still further, to the Courts of each State must belong the determination of the question, to what classes of persons, according to just rules of interpretation, the phrase "persons held to service or labor" is strictly applicable.*

Such is this much-debated provision. The Slave States, at the formation of the Constitution, did not propose, as in the cases of Naturalization and Bankruptcy, to empower the National Government *to establish an uniform rule* for the rendition of fugitives from labor, *throughout the United States;* they did not ask the National Government to charge itself in any way with this service; they did not venture to offend the country, and particularly the Northern States, by any such assertion of a hateful right. They were content, under the sanctions of compact, to leave it to the public sentiment of the States. There, I insist it shall remain.

Mr. President, I have occupied much time; but the great subject still stretches before us. One other point yet remains, which I should not leave untouched, and which justly belongs to the close. The Slave Act violates the Constitution and shocks the Public Conscience. With modesty and yet with firmness let me add, sir, it offends against the Divine Law. No such enactment can be entitled to support. As the throne of God is above every earthly throne, so are his laws and statutes above all the laws and statutes of man. To question these is to question God himself. But to assume that human laws are beyond question is to claim for

their fallible authors infallibility. To assume that they are always in conformity with those of God is presumptuously and impiously to exalt man to an equality with God. Clearly human laws are not always in such conformity; nor can they ever be beyond question from each individual. Where the conflict is open, as if Congress should command the perpetration of murder, the office of conscience as final arbiter is undisputed. But in every conflict the same Queenly office is hers. By no earthly power can she be dethroned. Each person, after anxious examination, without haste, without passion, solemnly for himself must decide this great controversy. Any other rule attributes infallibility to human laws, places them beyond question, and degrades all men to an unthinking passive obedience.

According to St. Augustine, an unjust law does not appear to be a law: *lex esse non videtur quæ justa non fuerit*: and the great fathers of the Church, while adopting these words, declare openly that unjust laws are not binding. Sometimes they are called "abuses," and not laws; sometimes "violences," and not laws. And here again the conscience of each person is the final arbiter. But this lofty principle is not confined to the Church. A master of philosophy in early Europe, a name of intellectual renown, the eloquent Abelard, in Latin verses addressed to his son, has clearly expressed the universal injunction:

> Jussa potestatis terrenæ discutienda
> Cœlestis tibi mox perficienda scias.
> Signis divinis jubeat contraria jussis
> Te contra Dominum pactio nulla trahat.

The mandates of an earthly power are to be discussed; those of Heaven must at once be performed; nor can any agreement constrain us against God. Such is the rule of morals. Such, also, by the lips of judges and sages, has been the proud declaration of the English law, whence our own is derived. In this conviction patriots have fearlessly braved unjust commands, and martyrs have died.

And now, sir, the rule is commended to us. The good citizen, as he thinks of the shivering fugitive, guilty of no crime, pursued, hunted down like a beast, while praying for Christian help and deliverance, and as he reads the requirements of this act, is filled with horror. Here is a despotic mandate, "to aid and assist in the prompt and efficient execution of this law." Again let me speak frankly. Not rashly would I set myself against any provision of law. This grave responsibility I would not lightly assume. But here the path of duty is clear. By the Supreme Law, which commands me to do no injustice; by the comprehensive Christian Law of Brotherhood; *by the Constitution, which I have sworn to support*, I AM BOUND TO DISOBEY THIS ACT. Never, in any capacity, can I render voluntary aid in its execution. Pains and penalties I will endure; but this great wrong I will not do. "I cannot obey; but I can suffer," was the exclamation of the author of Pilgrim's Progress, when imprisoned for disobedience to an earthly statute. Better suffer injustice than do it. Better be the victim than the instrument of wrong. Better be even the poor slave, returned to bondage, than the unhappy Commissioner.

There is, sir, an incident of history, which suggests a parallel, and affords a lesson of fidelity. Under the triumphant exertions of that Apostolic Jesuit, St. Francis Xavier, large numbers of the Japanese, amounting to as many as two hundred thousand—among them princes, generals, and the flower of the nobility—were converted to Christianity. Afterwards, amidst the frenzy of civil war, religious persecution arose, and the penalty of death was denounced against all who refused to trample upon the effigy of the Redeemer. This was the Pagan law of a Pagan land. But the delighted historian records that scarcely one from the multitudes of converts was guilty of this apostacy. The law of man was set at naught. Imprisonment, torture, death, were preferred. Thus did this people refuse to trample on the painted image. Sir, multitudes among us will not be less steadfast in refusing to trample on the living image of their Redeemer.

Finally, sir, for the sake of peace and tranquillity, cease to shock the Public Conscience; for the sake of the Constitution, cease to exercise a power which is nowhere granted, and which violates inviolable rights expressly secured. Leave this question where it was left by our fathers, at the formation of our National Government, in the absolute control of the States, the appointed guardians of Personal Liberty. Repeal this enactment. Let its terrors no longer rage through the land. Mindful of the lowly whom it pursues; mindful of the good men perplexed by its requirements; in the name of charity, in the name of the Constitution, repeal this enactment, totally and without delay. Be inspired by the example of Washington. Be admonished by those words of Oriental piety—"Beware of the groans of the wounded souls. Oppress not to the utmost a single heart; for a solitary sigh has power to overset a whole world."